

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted today via the Office electronic filing system in accordance with 37 CFR §1.6 (a)(4).	
Date: <u>7/10/2011</u>	Signature:  Mark S. Starzomski, 62,441

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/682,088 Confirmation No. 9198
Applicant : Hamid Mahmood, et al
Filed : October 10, 2003
TC/A.U. : 2476
Examiner : Abelson, Ronald B.
Docket No. : 77682-519
Customer No. : 07380

Mailstop AF
Expedited Handling Requested

Commissioner for Patents
Alexandria, VA 22313-1450
U.S.A.

Dear Sir:

Pre-Appeal Brief Request for Review

Applicants request review of the final rejections issued in connection with the above-identified application on December 6, 2010. A Notice of Appeal has been submitted concurrently herewith.

The Examiner has stated that claims 1 to 8, 11 to 18 and 21 to 29 are unpatentable under 35 U.S.C. 103(a) over Alriksson *et al.* (U.S. Patent No. 6,977,938, hereinafter Alriksson) in view of Dolganow *et al.* (U.S. Patent Publication No. 2006/0123110, hereinafter Dolganow), McAllister *et al.* (U.S. Patent Publication No. 2001/0010681, hereinafter McAllister) and further in view of Iwata (U.S. Patent No. 6,108,708). The Examiner alleges that the combination of Alriksson, Dolganow and McAllister discloses the majority of the limitations of claim 1, but fails to disclose "selecting a route from a terminal". It is alleged that Iwata teaches source routing from a terminal based on the disclosure of FIG. 1, in particular elements 100 and 120, in Iwata and the corresponding description at column 1, lines 47 to 49 and column 3, lines 39 to 41.

Applicants bring to the Review Panel's attention page 4, line 15 to page 5, line 17 of the Office Action Response dated September 23, 2010 that highlight selected portions of the description of the present application and discuss the differences between nodes in a network performing source routing, in a manner analogous to Dolganow and McAllister, and the novel approach of a terminal performing routing of a packet at the terminal recited in the claims of the present application.

Claim 1 recites that selecting a route is performed "from the terminal in dependence upon the network information and information dependent upon wireless communications between the terminal and a least one of the nodes" (emphasis added). Applicants submit that since the network information is recited as being received by the terminal and the information dependent upon wireless communications is not recited as being

received at the terminal, the information dependent upon wireless communications is inherent to the terminal resulting from wireless communications with a one hop away network node. Furthermore, since the “information” is recited as information that is dependent upon wireless communications between the terminal and a least one of the nodes, Applicants submit that this is information based on a link between the terminal and at least one node. Since it is a wireless link, the link is range limited and does not necessarily include every link to every node in the network. The wireless communications between the terminal and a least one of the nodes are typically over a link between the terminal and a node a first hop away from the terminal, also considered to be “the last hop wireless link between the terminal and the network”, page 9, lines 8-9 of the present application. Therefore, Applicants submit that the combination of Dolganow and McAllister fails to disclose selecting a route “from the terminal in dependence upon the network information and information dependent upon wireless communications between the terminal and a least one of the nodes”.

For at least the reasons discussed above, Applicants respectfully submit that the combination of Alriksson, Dolganow, McAllister and Iwata does not teach all of the limitations recited in claim 1, as alleged by the Examiner. Furthermore, the Examiner has failed to explain why the missing features would be obvious to one skilled in the art. Without all the limitations of claim 1 being disclosed by the four references and no reason provided by the Examiner why these missing limitations would be obvious, it is not reasonable to expect that the combination of references would render claim 1 of the present invention obvious.

Reason to Combine

Applicants submit that the Examiner’s selection of Alriksson is based on hindsight selection solely for its disclosure of a wireless terminal. The Examiner concedes that Alriksson does not disclose any of the steps of the method performed by the wireless device in claim 1 of the present application. As Alriksson does not disclose the active method step limitations of claim 1, which are alleged to be disclosed by the other three references, it is improbable that one skilled in the art would consider such a reference in combination with Dolganow and McAllister, which do not disclose wireless terminal functionality.

On page 14 of the Final Office Action the Examiner indicates with regard to Applicants argument that the selection of Alriksson is based on hindsight that Alriksson discloses source routing in a wireless environment. Applicants maintain that while Alriksson may be considered to disclose source routing in a terminal, none of the limitations recited in the body of claim 1 and therefore relevant to the invention are disclosed in Alriksson and it is solely for the preamble of the claims that the Examiner is citing Alriksson, while at least two of the other references perform source routing of a type that teaches away from Alriksson.

In addition, Applicants submit that there is no suggestion of a desirability of the claimed invention in the references that would serve as a reason for one skilled in the art to combine the references. On page 14 of the Final Office Action the Examiner indicates that there is a suggestion of a desirability of the claimed

invention as all the references teach source routing and Iwata teaches route selection performed in the terminal. Applicants maintain that the Examiner has failed to provide a suitable explanation of why one would combine the four cited references when at least two of the references being relied upon for the majority of the steps of the method claim are unrelated to wireless communications, which is particularly relevant to the claims as well as for the various reasons discussed in further detail below.

The Examiner alleges that it would have been obvious to modify the system of Alriksson by "receiving, via a respective wireless link from at least one of a plurality of wireless access nodes forming a network, network information relating to links between nodes and selecting a route via the network for packets from the terminal in dependence upon the network information and supplying packets with information relating to the selected route" as allegedly disclosed by Dolganow. The Examiner alleges that such a modification "would benefit the system by ensuring the source nodes choose a route based on the current available bandwidth between the links". Applicant submits that Dolganow discloses networks in which the switching nodes, not wireless terminals, receive information and select an appropriate route.

The Examiner alleges that it would have been obvious to modify the system of the combination of Alriksson and Dolganow by selecting a route in dependence upon information dependent upon communications between the source node and at least one of the nodes as allegedly disclosed in McAllister. The Examiner alleges that such a modification "would benefit the system by ensuring that the chosen route is affordable to the end user". Applicant submits that Dolganow and McAllister both disclose networks in which the switching nodes, not wireless terminals, select an appropriate route.

As each of Dolganow and McAllister do not operate in the same manner as Alriksson, Applicant submits that the proposed modification of the references resulting from the combining of the references suggested by the Examiner would change the principle of operation of each of Dolganow and McAllister or Alriksson, as Dolganow and McAllister operates in a different manner than Alriksson. Applicant submits that this is another reason that one skilled in the art would not combine Dolganow, McAllister and Alriksson in the manner alleged by the Examiner.

On pages 12 and 13 of the Final Office Action in the Response to Arguments section the Examiner indicates with respect to both Dolganow and McAllister the particular example illustrate only specific examples in which a source node is connected only to one device, either the Originating Switch in Dolganow or the Node A in McAllister. The Examiner suggests that it would have been obvious if the source node were connected to more than one Originating Switch or Node A for routing information to be sent to the source node so that the source node could optically select a route. It is unclear why the Examiner is alleging that such an assumption would be obvious for each of the two separate references, neither of which suggests such a

scenario. If it was to be considered obvious, as suggested by the Examiner, Applicants submit that at least one of the two references would have suggested such an example.

Furthermore, Applicants respectfully submit that while Dolganow and McAllister may disclose source routing from a network node, neither reference suggests or discloses taking into consideration “information dependent upon wireless communications between the terminal and a least one of the nodes”. Despite the Examiner’s allegation that a network node is a source node performing routing, Applicants submit that it is inappropriate to equate the network nodes of Dolganow and McAllister with a wireless communication terminal, when the network nodes of Dolganow and McAllister clearly do not have the functionality of a wireless communications terminal capable of utilizing “information dependent upon wireless communications between the terminal and a least one of the nodes”, as recited in claim 1.

Applicants submit that since Dolganow and McAllister do not disclose a wireless terminal receiving network information and selecting a routing path for a packet based on network information and information dependent upon wireless communications between the terminal and at least one of the nodes, but instead disclose a network node that does not consider information dependent upon wireless communications between the terminal and at least one of the nodes, each of Dolganow and McAllister teach away from a wireless terminal receiving network information and selecting a routing path for a packet based on network information and information dependent upon wireless communications between the terminal and at least one of the nodes. Applicants submit that this is a reason that one skilled in the art would not combine Dolganow and McAllister with Alriksson in the manner alleged by the Examiner.

The issue date of the Iwata patent is August 22, 2000. Both Dolganow and McAllister are directed to network nodes, which are not endpoints of the described network, performing the source routing. These two references include network endpoints that are identified as “users” in McAllister and “Originating Parties” in Dolganow. Neither of these references contemplates the users and Originating Parties as performing source routing. The McAllister application was filed on March 22, 2001 and the Dolganow application is a continuation of an application that was filed on June 11, 2001. Both dates are subsequent to the issue date of Iwata. If it were obvious to one skilled in the art to combine the references, as alleged by the Examiner, then it would seem likely that the McAllister and Dolganow applications would have suggested the possibility of the users and Originating Parties, respectively, performing the source routing, as the applications both having filing dates subsequent to Iwata issue date. However, neither reference suggests such a possibility. This is another reason why Applicant submits that one skilled in the art would not combine the references in the manner alleged by the Examiner and arrive at the claimed invention.

Furthermore, as Iwata is directed to source routing occurring in a terminal as opposed to in access nodes of the network, Applicant submits that, for similar reason to Alriksson, one skilled in the art would not consider combining Iwata with Dolganow and McAllister.

For at least the reasons discussed above, Applicants submit that the Examiner has failed to provide a suitable reason for combining the cited references. Applicants submit that the Examiner has failed to meet the initial burden of establishing a *prima facie* case of obviousness in view of limitations of claim 1 not being disclosed by the combination of references and failure to provide a suitable reason for combining the references. It is respectfully requested that the Review Panel overturn the obviousness rejection to claim 1.

Claims 14 and 24 are additional independent method claims that recite respective methods that are performed in the terminal. Claim 27 and 28 are independent claims directed to methods involving routing packets from a wireless communication terminal. As claims 14, 24, 27 and 28 all pertain to a wireless terminal operating in a similar fashion to claim 1, Applicants submit that claims 14, 24, 27 and 28 patentably distinguish over Alriksson, Dolganow, McAllister and Iwata. It is respectfully requested that the Review Panel overturn the obviousness rejection of claims 14, 24, 27 and 28.

Claims 2 to 8, 11 to 13, 15 to 18, 21 to 23, 25, 26 and 29 are dependent, either directly or indirectly, on claims 1, 14, 24 and 28. For at least the reason of their dependence on claims 1, 14, 24 and 28, Applicants submit that dependent claims 2 to 8, 11 to 13, 15 to 18, 21 to 23, 25, 26 and 29 patentably distinguish over the combination of Alriksson, Dolganow, McAllister and Iwata. It is respectfully requested that the Review Panel overturn the obviousness rejection of the identified dependent claims.

Claims 9, 10, 19 and 20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Alriksson, Dolganow, McAllister, Iwata and in view of other references. Claims 9 and 10 depend indirectly on claim 1 and claims 19 and 20 depend directly on claim 14. In view of Applicants' submission regarding the 35 U.S.C. 103 rejection of claims 1 and 14, dependent claims 9, 10, 19 and 20 should also be patentable. In view of the above discussion, the Review Panel is respectfully requested to overturn the 35 U.S.C. 103 rejections of claims 9, 10, 19 and 20.

In view of the foregoing, Applicants respectfully request the Final Office Action be overturned and the examination of the application be reopened or the application allowed.

Respectfully submitted,

HAMID MALLMOOD, ET AL.

By



Mark S. Starzomski

Reg. No. 62,441

Dated: March 7, 2011
MSS:sng